



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2004

Mr. Kuruvilla Oommen
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

OR2004-2864

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198969.

The Houston Police Department (the "department") received a request for information pertaining to a specified complaint. You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information constitutes a completed investigation made of, for, or by the department. Thus, the department must release the

submitted information, unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law.

You claim that the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. *See* Gov't Code § 552.108(a)(2). You indicate that the criminal investigation associated with the submitted information was concluded with the determination by the Harris County District Attorney's Office not to accept charges. Thus, we understand the department to contend that the submitted information pertains to a criminal case that has concluded in a final result other than conviction or deferred adjudication. Accordingly, we agree that the submitted information is generally excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public, to include detailed description of offense). We note in this regard that the identity of a complainant is generally considered basic information. *See id.*

You claim that the identifying information of the complainant in this matter is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege.¹ We note that Texas courts have long recognized the common-law informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *see also Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928); *Roviaro v. United States*, 353 U.S. 53, 59 (1957). However, we also note that the informer's privilege under *Roviaro* exists to protect a governmental body's interest. Thus, the informer's privilege under *Roviaro* may be waived by a governmental body and does not constitute other law that makes information confidential for purposes of section 552.022 of the Government Code. *See* Open Records Decision No. 549 at 6 (1990). Accordingly, we conclude that the department may not withhold any portion of the information that identifies the complainant in this matter under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. We note, however, that the informer's privilege is also found in rule 508 of the Texas Rules of Evidence. *See* Tex. R. Evid. 508. The Texas Supreme Court has held that "[t]he Texas Rules of Civil Procedure and Texas Rules of

¹ Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law informer's privilege.

Evidence are 'other law' within the meaning of section 552.022." *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we will determine whether any portion of the identifying information of the complainant in this matter is confidential under rule 508.

Rule 508 of the Texas Rules of Evidence provides in relevant part:

(a) Rule of Privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished, except the privilege shall not be allowed in criminal cases if the state objects.

Tex. R. Evid. 508(a), (b). Thus, an informer's identity is confidential under rule 508 if a governmental body demonstrates that an individual has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation and the information does not fall within the purview of the exceptions to the privilege enumerated in rule 508(c).

However, we note that rule 508(c)(1) provides

[n]o privilege exists under this rule if the identity of the informer or the informer's interest in the subject matter of the communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the public entity.

Tex. R. Evid. 508(c)(1). You indicate that the information at issue that the department seeks to withhold under the informer's privilege concerns the identity of an individual who has furnished the department with information relating to or assisting in an investigation of a possible violation of a law. Thus, we find that rule 508 is applicable to this particular information. However, it appears from our review of the submitted information that the individual who would have cause to resent the communication by the informer to the department is already aware of the identity of the informer. Accordingly, we conclude that the department may not withhold any portion of the identifying information of the complainant in this matter under rule 508 of the Texas Rules of Evidence. Consequently,

the department must release to the requestor all of the basic information that is contained within the submitted information.²

In summary, with the exception of basic information that must be released to the requestor, the department may withhold the submitted information pursuant to section 552.108(a)(2) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

² As our ruling is dispositive, we need not address your remaining arguments.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 198969

Enc. Submitted documents

c: Mr. Gregory Jackson
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Houston, Texas 77065
(w/o enclosures)